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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,388	08/22/2006	Joanne Lynsey Morgan	MORGAN-1 PCT	9005
25889 7590 08/22/2008 COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576				
EXAMINER				
HALE, GLORIA M				
ART UNIT		PAPER NUMBER		
3765				
MAIL DATE		DELIVERY MODE		
08/22/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/584,388

**Applicant(s)**

MORGAN, JOANNE LYNSEY

**Examiner**

Gloria Hale

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 11-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 11-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 11-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 5 and claim 14, lines 3-7 it is not clear if applicant is claiming a garment in combination with a the sling or just the losing itself. The recitation "said sling being suspended in use form said garment, or in the body of the wearer underneath the garment" are not structurally equivalent and it is not clear as to what is exactly being claimed. The location of the suspension is also no clear in regard to "at least one location at or above an upper portion of the associated at least one breast or at least from above at least one nipple". The locations are not structurally equivalent and the exact location is not clear. In claim 11, the specification on page 21 discloses the stretchable material and the non-slip material has not been disclosed In claim 12, line 4 it is not clear as to what "adhesive stitching" is. Also it is not clear as to whether applicant is claiming the losing in combination with a garment. It is not clear as to where the fastener components are located, such as a loop or hole.

In regard to claim 13 it is not clear as to whether the silicone cover is in combination with the sling and as to where in the original specification the silicone "Cover" has been disclosed. Only a silicone layer is disclosed in regard to figure 7. It is not clear as to

what the "silicone cover" encompasses. Is it a silicone layer on the strap? However it is not clear as to how that would cover the nipple as claimed in claim 13. OR is the silicone nipple cover actually a disc-like silicone nipple cover? However no such silicone disc shaped nipple cover was shown in the original figures or described in the original specification. It is not clear as to what applicant is now claiming. In regard to claim 14, line 8 the sling is claimed as a "sling or wrap" which are not structurally equivalent. IT is not clear as to what the wrap encompasses. In claim 15, line 2 it is not clear as to what the "wrap" encompasses. IT is not clear as to how it is connected to the breast. In regard to claim 16, line 5 it is not clear as to how the wrap is "coupled to the at least one breast". In regard to claim 17 it is not clear as to how the suspension means is attached to the garment and wrap. In claim 19, line 3 the claim claims the strap as being stretchable twice and is redundant. "Displaceable" and "Deformable" are not structurally equivalent.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The original specification does not disclose a silicone cover but only silicone material in regard to figure 7. Applicant needs to better describe in the remarks as to what the "silicone" in the claims is and as to where and how it is attached to the sling. A "Cover" Was not originally described in the specification and should be removed from the claims. .

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,11,12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Lustig (US 2,406,699).

In regard to claim 1 Lustig discloses a bust support apparatus 10 as seen in figure 3 with at least one sling that is stretchable(15,16,22,23) to support the breast from at least one location at an upper portion of the breast above the nipples at fasteners 28,29. (See Lustig, col. 1, lines 26-52). In regard to claim 11 the elastic material itself performs non-slip functions for gripping as claimed. In regard to claims 12 and 14-16, the sling is fastened to a garment as claimed including stitching which is a fastening means. (See Lustig, col. 2, lines 1-2)

Claims 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Freeman (US 1,584,525).

Freeman discloses the garment 10 with the stretchable wrap 20 with ends 21 located as claimed. The strap of Freeman includes an elastic section (not shown) to provide adjustability in addition to an adjustable fastener. Freeman discloses the cups to hold the breasts with the strip diagonally mounted as claimed. (See Freeman, figures 1,2 and 4; page 2 lines 22-101 and lines 73-101). IN regard to claim 17 Freeman discloses the at least one wrap 10 with the suspension means 20 and fastener means

22 (page 2, lines 60-63) of known separate fasteners. The garment is attachable with the fasteners of hooks and eyes 16,17,snaps 15 or buttons 16.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lustig in view of Furuno (US6200195).

Lustig discloses the sling substantially as claimed as discussed above. However, Lustig does not specifically disclose the silicone nipple cover to cover the nipple and wearable with the LUSTIG bust support. Furuno discloses a silicone nipple cover to cover and protect a wearer's nipple as desired. Accordingly it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bust support apparatus of Lustig with the nipple cover of Furuno in order to also cover one's nipple as desired for further protection from abrasion. (See Furuno, figures).

***Response to Arguments***

Applicant's arguments with respect to claim 1 has been considered but are moot in view of the new ground(s) of rejection. The prior rejection has been dropped since

the sling was not stretchable. However, new prior art has been found and a new rejection made due to the claim amendments and new claims.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984. The examiner can normally be reached on Mon.-Thurs...

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gloria Hale/  
Primary Examiner, Art Unit 3765

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